

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2813 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RF SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS.KHYATI P HATHI FOR MR PV HATHI for Petitioner
Mr.P.G.Desai, G.P. for the respondents.

CORAM : MS.JUSTICE C.K.THAKKER

Date of decision: 12/11/97

ORAL JUDGEMENT

This petition is filed by the petitioner for an appropriate writ, direction or order directing the State of Gujarat and other authorities to determine pay scales of the petitioner in the scale of Rs.550-900 as per Government Resolution dt. October 6, 1979 with effect from 1st January 1973 and to grant benefits on that basis.

The case of the petitioner is that he is serving as a Senior Librarian in Central Library, Sachivalaya, Gandhinagar. He was appointed as a Librarian in 1970-71. It was his case that there are common categories of the Librarian, viz. Librarian serving in Sachivalaya Central Library; and (2) Librarians serving in colleges owned, controlled and managed by the Secretary, Education Department. Assertion of the petitioner in the petition is that both the posts of Librarian i.e. Librarian in Sachivalaya Library as also Librarian in college library are identical posts. They are doing equal work. They are having equal education qualification and that they must be treated equally. The doctrine of "Equal Pay for Equal Work" must apply to them. Pay scale of the librarians as per Desai Pay Commission were Rs.425-700. Subsequently, however, by a resolution dt. 6th October 1979, issued by the Education Department, pay scales of Librarians working in Government and non-government colleges were revised from Rs.425-700 to Rs.550-900 and the benefits were given to them from 1st January 1973. Copy of the said resolution is annexed to the petition at Annexure.A. When the said benefit was claimed by the petitioner, it was not given to the petitioner on the ground that the resolution would apply to Librarians working in colleges only and since the petitioner was not in any college, he was not entitled to the said benefit.

Being aggrieved by the action, the petitioner has approached this court.

The petition was admitted on 1st October 1986. Rule was issued and the matter was expedited. To day the matter is called out for final hearing.

Till to day no affidavit is filed by the respondents and assertions made by the petitioner have not been controverted.

Looking to Annexure.A, it is clear that the pay scales of Librarians working in Government and non-Government colleges were revised from Rs.425-700 to Rs.550-900 and the benefit was extended with effect from 1st January 1973. The question, however, is as to whether the petitioner would be entitled to the said benefit.

Ms. Hathi, learned counsel for the petitioner submitted that the point is no longer res integra. In many petitions, this court has decided that as all the Librarians are performing similar functions, discharging similar duties and having similar qualifications, they

are similarly situated and the doctrine of "Equal Pay for Equal Work" would apply to all of them. Reliance was placed on a decision of a Single Judge of this court in Special Civil Application No. 878 of 1984, decided on November 1, 1985. In that petition, the petitioner was appointed initially in DKV College, Jamnagar but thereafter transferred to District Library, Bhavnagar and again to AMP Law College, Rajkot. Though pay scales of librarians were revised, the petitioner was denied the said benefit on the ground that the resolution dt. October 6, 1979 was not applicable to him during the intervening period when he was serving as a Librarian in the District Library and not in any college. Considering the resolution, functions to be performed and duties to be discharged, this court held that all the posts of Librarians were equivalent and transferable. It was, therefore, not open to the respondent authorities to deprive the petitioner of the benefits of higher pay scale on the ground that he was serving as Librarian in District Library. The petition was accordingly allowed and the authorities were directed to fix pay scales of the petitioner on the basis of Government Resolution referred to above.

A similar view was taken by a Single Judge of this court in Special Civil Application No.1946 of 1982 decided on August 30, 1983. My attention was also invited by Ms.Hathi to a recent decision of this court in M.S.Pandya v. State of Gujarat & ors. 1997(1) GLR 647. In that case three petitions were filed. The petitioners were serving as Librarians but not in a college. It was contended that the act of non-extension of the benefits of pay scales of Rs.550-900 was arbitrary, unreasonable and violative of Arts. 14 and 16 of the Constitution of India on the ground that though all the librarians were performing similar functions and discharging similar duties, differential treatment was meted out.

Considering previous decisions, the learned Single Judge held that the point was concluded by earlier pronouncements of this court including the case decided by the Single Judge of this court in Special Civil Application No. 878 of 1984 (to which reference has already been made). It was observed that against the order passed in Special Civil Application No. 878 of 1974, a Letters Patent Appeal No. 189 of 1986 was filed which was dismissed on March 3, 1993 and even SLP filed against the order in LPA met with the same fate on March 3, 1994.

The learned Government Pleader could not point

out any distinguishing feature so far as the law laid down by this court in Special Civil Application No. 878 of 1984 confirmed in the Letters Patent Appeal as well as other decisions to which reference is made. He submitted that the Education Department after considering the facts, revised pay scales of Librarians working in Government and non-Government colleges and the said benefits were rightly not extended in favour of other librarians.

In my opinion, the point is concluded by various decisions of this court. So far as the first decision is concerned, it is approved by a Division Bench and even SLP is dismissed, the submission of Mr.Hathi that the point is no longer res integra must be upheld.

In the result, this petition is allowed with costs. The rule is made absolute. The respondent authorities are directed to extend the benefit of pay scales of Rs.550-900 to the petitioner with effect from 1st of January 1973. Such benefits must be extended to the petitioner within three months from the receipt of the writ.

Dt. 12.11.1997.

(C.K.THAKKER J.)